

## **Minutes Tempe Police Public Safety Personnel Retirement System Board February 4, 2016**

Minutes of the Tempe Police Public Safety Personnel Retirement System Board, held on Thursday, February 4, 2016, 2:00 p.m., Tempe City Hall, third floor conference room, 31 E. 5th Street, Tempe, Arizona.

**Board Members Present:**

Joe Brosius  
Kelley McMenemy  
Jeff Millen  
Dr. Russell Schoeneman

**Board Members Absent:**

Mark Mitchell, Mayor

**City Staff Present:**

Renie Broderick, Internal Services Director  
Wendy Messina, HR Program Coordinator  
Susan Buck, Executive Assistant

**Legal Counsel Present:**

Cynthia Kelley

*Joe Brosius called the meeting to order at 2:05 p.m.*

**ITEM I – Joint Discussion of the Fire and Police Public Safety Personnel Retirement System Boards**

See the February 4, 2016 Joint Fire and Police Public Safety Personnel Retirement System Board Meeting Minutes.

**ITEM II - Consideration of Meeting Minutes**

Motion by Jeff Millen to approve the January 7, 2016 Board Meeting Minutes and the January 7, 2016 Board Executive Session Minutes; second by Russell Schoeneman. Motion passed on a voice vote 3-0; Kelly McMenemy abstained from voting as she was not present at the January meeting.

**ITEM III - Public Appearances**

There were none.

**ITEM IV - Motion to Adjourn to Executive Session**

Motion by Jeff Millen to adjourn to Executive Session; second by Kelly McMenemy. Motion passed unanimously on a voice vote 4-0. The Board convened into Executive Session at 2:07 p.m.; the Board meeting was called back to order at 2:28p.m.

**ITEM V – Staff Clarification Regarding Lateral Transfers**

Local Board Secretary Renie Broderick stated that there was discussion at the February meeting regarding lateral transfers and transfer of service that staff wanted to clarify. Ms. Broderick stated that public safety lateral transfers are sent for a physical by the City of Tempe; they have to meet the same standards as a new hire. Board Legal Counsel Cynthia Kelley stated that they transfer their fund assets and their liabilities from the PSPRS employer they were transferring from. Joe Brosius asked if the City of Tempe receives a copy of the PSPRS physical done by the previous employer. Ms. Broderick indicated that information is not provided to the City. The Board discussed the City of Tempe lateral hire process in general. Jeff Millen stated that there could potentially be a medical condition noted on the physical from the member's previous employer that could impact future eligibility for PSPRS disability benefits. Boardmember

Brosius requested that staff explore the possibility of obtaining the medical exam information from the previous employer for PSPRS lateral transfers. Ms. Broderick stated that staff will do so and will report back to the Board.

Ms. Broderick also clarified "transfer of service". A current employee can transfer previous service from another employer *into* the Tempe fund; an employee leaving Tempe can also transfer service *out of the* Tempe fund when they leave Tempe for another employer. All transfers of service should be acknowledged by the Board.

#### ITEM VI – Prior Service / Transfer of Service

The Board acknowledged the following transfers of service:

- **Jason L. Moser**, 7.1360 years, transfer to Mesa Police Department
- **Michael Powell**, 8.3230 years, transfer from Pima County Sheriff's

#### ITEM VII – Initial Hearing for Accidental Disability Benefits

Boardmember Brosius opened the hearing by asking if there was any discussion or questions. Boardmember Millen asked Darin Mowery about his original hire paperwork, which mentions a pre-existing injury to his left patella. Mr. Mowery stated that he now has substantial arthritis in his knee and limited mobility post-surgery that he did not have pre-surgery. Mr. Mowery stated that he believes this has been caused by years of working at the Academy as an RTO, running hills and teaching defensive tactics classes. Motion by Jeff Millen to send **Darin W. Mowery** for an Independent Medical Exam (IME); second by Russell Schoeneman. Motion passed unanimously on a voice vote 4-0. Boardmember McMenemy stated that she will coordinate the scheduling of the IME.

#### ITEM VIII – Hearing for Accidental Disability Benefits

Boardmember Brosius stated this hearing was continued from the January 7, 2016 Board meeting. Motion by Jeff Millen to deny the application by **William R. Vanek** for Accidental Disability Benefits; second by Kelly McMenemy. Board Legal Counsel Cynthia Kelley requested the Board discuss and explain the reason for the denial for the record. Boardmember Millen stated that after reading the IME report, the Board requested clarification from the IME physician, Dr. Kipling Sharpe. Dr. Sharpe responded to the Board with written clarification, stating that Mr. Vanek's medical condition was *not* the result of an injury that occurred during the performance of his duties. Dr. Sharpe stated that while the symptoms occurred at work, that was only coincidental and the injury would have occurred whether Mr. Vanek worked or not.

Boardmember Brosius read into the record the following questions from the "Medical Board" section of the Form P5-LB-A, Accidental Disability Questionnaire, along with the answers provided by **Dr. Kipling Sharpe** as part of the IME report:

- 1) Does the employee have the physical or mental condition that is the basis for the disability application? **YES**
- 2) Does the injury or condition totally prevent the employee from performing a reasonable range of duties within the employee's job classification? **YES**
- 3) Does the injury or condition permanently prevent the employee from performing a reasonable range of duties within the employee's job classification? **YES**
- 4) Was the injury or condition the result of an event incurred during the performance of the employee's duty? **NO**

Boardmember Brosius addressed Mr. Vanek and stated that all of those questions must be answered "yes" in order for the Board to approve the application for disability benefits. Boardmember Brosius asked if Mr. Vanek had any questions.

Mr. Vanek addressed the Board and reiterated the concerns he voiced at the January 7, 2016 Board meeting regarding Dr. Kipling Sharpe, the physician who conducted his IME. Mr. Vanek feels that Dr. Sharpe either does not like police officers or that he has an issue with Mr. Vanek's treating physician, Dr. Dungy. Mr. Vanek stated that his wife, who is a nurse, attended the IME along with him and was dumfounded by the way that Dr. Sharpe conducted the exam. Mr. Vanek stated that he experienced additional pain and injury as a result of the IME exam and because of that was unable to perform his exercises at physical therapy the next day. Mr. Vanek pointed out that in the IME report, Dr. Sharpe

indicates that "Mr. Vanek had underlying degenerative changes in his knee that were aggravated by stair climbing at work". Mr. Vanek questioned Dr. Sharpe's subsequent assertion that the injury did not occur at work and doubted that it would have occurred if he stayed home and watched television all day, as opposed to walking up and down the stadium stairs wearing 18 pounds of equipment. Mr. Vanek called the Board's attention to MRI results in his medical records and recounted his visit with Dr. Carter, who indicated that climbing the stairs would cause his medical condition. Mr. Vanek asserted that his injury *did* occur at work. Mr. Vanek asked what medical documentation the Board bases their determination on.

Boardmember Brosius stated that the Board must base their decision specifically on the IME results; he then advised Mr. Vanek that he has appeal rights. Mr. Vanek stated that he understood. Wendy Messina, HR Program Coordinator, stated that she will contact Mr. Vanek to provide him with information regarding his appeal rights.

Boardmember Brosius stated there was a motion and a second on the table and called for a voice vote. **The motion passed on a voice vote 4-0.**

Boardmember Brosius read into the record the following questions from the Form P5-LB-A, Accidental Disability Questionnaire, along with the Board's responses:

- 1.) Did the employee file the application after the disabling incident, or within one year of ceasing to be an employee? **YES**
- 2.) Did the employee terminate by a reason of disability? **NO**
- 3.) Did the employment terminate based on a disciplinary issue? **NO**
- 4.) If the member's period of DROP has ended, if applicable, did the employee terminate by a reason of disability? **NO**
- 5.) Is the employee still working a position within their job classification that the Local Board considers a reasonable range of duties position? **NO**
- 6.) Has the employee refused a position within their job classification that the Local Board considered a reasonable range of duties? **NO**
- 7.) Did the injury or condition occur prior to the current PSPRS membership date? **NO**
- 8.) Was the injury or condition the result of an event incurred during the performance of the employee's duty? **NO**

#### **ITEM IX – Status Update on Pending Disability Applications**

Jeff Millen provided an update on the pending disability application of **James Click**. Boardmember Millen stated the first IME report has been received from the psychologist, but the second IME appointment with a psychiatrist is still pending; there was some confusion with the second doctor and scheduling. Boardmember Brosius asked if the results of the second IME would be received in time for the next Board meeting. Boardmember Millen stated yes, hopefully the IME results will be received in time for the March meeting.

#### **ITEM X – Annual Review of Members Receiving Disability Benefits (Revised)**

Boardmember Brosius stated that the Board discussed this item in Executive Session. The Board has requested that their legal counsel review the laws regarding anyone receiving PSPRS disability under 20 years and the tax ramifications if those members are called back in. Boardmember Brosius requested that staff list this as an agenda item for the March meeting.

#### **Future Meeting Date**

The next meeting is March 3, 2016. Boardmember Brosius stated that he will not be able to attend the March meeting. Ms. Broderick stated that the March meeting will be held in the Human Resources Conference Room as the City Hall 3<sup>rd</sup> Floor Conference Room will be under renovation.

#### **ITEM XI - Future Agenda Items**

- Benefit Calculation Examples
- Annual Review of Members Receiving Disability Benefits

**Adjournment**

Motion to adjourn by Kelly McMenemy; second by Jeff Millen. Motion passed unanimously on a voice vote 4-0. The meeting adjourned at 2:45 p.m.



Renie Broderick  
Local Board Secretary